No. 79-1740

In The
Supreme Court of the United States
October Term, 1980

GERMAIN H. BALL, et al.,
Appellants,
v.
ROLAND W. JAMES, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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APPEAL DOCKETED MAY 2, 1980
PROBABLE JURISDICTION NOTED OCTOBER 6, 1980.

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CHRONOLOGICAL LIST OF REVELANT DOCKET ENTRIES

Date *Description*

July 28, 1975—Complaint, filed in U.S. District Court for the District of Arizona

August 18, 1975—Answer

December 29, 1975—Plaintiffs' Application for Convening of Three-Judge District Court, Memorandum

December 31, 1975—Defendants' Motion to Deny Request for Three-Judge Court, Memorandum

February 2, 1976—Hearing had on Plaintiffs' Application for Convening Three-Judge District Court and Defendants' Motion to Deny Request for Three-Judge Court. It is ORDERED that Plaintiffs' Application is denied and Defendants' Motion to Deny Request granted

February 3, 1976—Plaintiffs' Notice of Hearing Motion for Preliminary Injunction on February 27, 1976, at 9:00 a.m.

February 10, 1976—Stipulation and ORDER that parties will file motions for summary judgment by February 24, 1976; that the hearing set for February 27, 1976, is vacated

February 24, 1976—Plaintiffs' Motion for Summary Judgment and Memorandum

February 24, 1976—Defendants' Motion for Summary Judgment and Memorandum

February 24, 1976—Stipulated Statement of Facts

February 24, 1976—Exhibits to Stipulated Statement of Facts filed February 24, 1976

March 10, 1976—First Supplement to Stipulated Statement of Facts

March 11, 1976—Defendants' Motion to Strike and Motion to Continue Hearing on Motions for Summary Judgment and Notice of Hearing on March 12, 1976, at 2:00 p.m.

March 15, 1976—Stipulation and ORDER that the Clerk may add to the exhibits to Stipulated Statement of Facts filed February 24, 1976, and further exhibits designated Exhibits AA and BB filed on March 10, 1976, to be bound together with the previous exhibits filed on February 24, 1976

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES (Continued)

Date *Description*

March 15, 1976—Motion to Strike argued. ORDER newspaper articles are stricken

March 16, 1976—Second Supplement to Stipulated Statement of Facts

March 17, 1976—Minute Entry: Hearing had on Plaintiffs' and Defendants' Motions for Summary Judgment. ORDER: status of this case as a class action is denied. ORDER: Defendants' request for relief by sealing or expunging from the record certain matters heretofore submitted to the court denied. ORDER: Defendants' Motion for Summary Judgment granted and Plaintiffs' denied

March 17, 1976—JUDGMENT that the Plaintiffs take nothing and that the action is dismissed

March 18, 1976—ORDER: that lines 16—18 on page 7, lines 6—10 on page 16, and exhibits 1, 2 and 3 of Plaintiffs' Reply Memorandum in Support of Their Motion for Summary Judgment, and lines 26—32 on page 22 and all of page 23 of Plaintiffs' Memorandum in Response to Defendants' Motion for Summary Judgment and exhibits 1, 2 and 3 to Plaintiffs' Memorandum in Response to Defendants' Motion to Strike and Motion to Continue Hearing be, and hereby are stricken from the record

March 18, 1976—JUDGMENT that Plaintiffs' request for certification of this action as a class action is denied. Plaintiffs' Motion for Summary Judgment is denied. Defendants' Motion for Summary Judgment is granted. Judgment is to be entered in favor of Defendants and against Plaintiffs with costs to be taxes against Plaintiffs.

March 23, 1976—Defendants' Bill of Costs in the amount of $38.00

March 29, 1976—Tax costs in the amount of $38.00

April 7, 1976—Plaintiffs' Notice of Appeal ($5.00 fee paid)

April 7, 1976—Plaintiffs' cost bond on appeal

October 12, 1979—Opinion and judgment of the Court of Appeals for the Ninth Circuit

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES (Continued)

Date *Description*

October 26, 1979—Petition for rehearing

November 27, 1979—Order of the Court of Appeals requesting appellants to file a response to the Petition for Rehearing and directing appellants and appellees to file memoranda addressing the following points: "(1) Is there any significant risk that changes in District policies affecting operations or rates can jeopardize lands which are security for outstanding bonded indebtedness? (2) If future policies of the District might appear to jeopardize such lands, would affected owners have any remedies, under Arizona law or the provisions of outstanding bonds, to require the district to alter such policies? (3) What instructions, if any, should be given to the district court in formulating its decree upon remand? a. Is it appropriate for the district court to request a plan for redemption or early retirement of bonded indebtedness secured by lands, either in conjunction with or as a condition precedent to ordering a change in the District's electoral system? b. Would the district court have the authority to require that the State of Arizona be made a party to these proceedings so that the court can consider requiring statutory enactments to protect landowners against default, either in conjunction with or as a condition precedent to the entry of an order effecting a change in the District's electoral system?"

December 21, 1979—Response to Petition for Rehearing

January 8, 1980—Appellees' Reply Memorandum Pursuant to Order of November 27, 1979.

February 6, 1980—Order denying rehearing

February 13, 1980—Notice of Appeal to the Supreme Court of the United States

May 2, 1980—Jurisdictional Statement filed in the Supreme Court of the United States

October 6, 1980—Probable Jurisdiction noted

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROLAND W. JAMES, MARY FITZSIMONS, JAMES R. FITZSIMONS, DWIGHT M. BRAHS, FRANK SACCO and JOHN H. MAFFEO, on behalf of themselves and their respective classes,

Plaintiffs,

vs.

GERMAIN H. BALL, ALEX M. CONOVALOFF, BILL ROUSSEAU, LEO C. SMITH, JOHN M. WILLIAMS, JR., THOMAS P. HURLEY, WILLIAM P. SCHRADER, JOHN S. HOOPES, W. LARKIN FITCH and THOMAS J. FINLEY, in their capacity as members of the Board of Directors of the Salt River Project Agricultural Improvement and Power District, and KARL F. ABEL, in his capacity as President of the Salt River Project Agricultural Improvement and Power District,

Defendants.

CIV 75-498
PHX WEC
COMPLAINT
[Filed July 28, 1975]

Plaintiffs allege as follows:

I

This is an action for a declaratory judgment and an injunction to redress the deprivation under color of state law of the rights, privileges and immunities of the plaintiffs secured under the Fourteenth Amendment of the United States Constitution. The action arises out of the unlawful

and unconstitutional voting restrictions and qualifications imposed upon the plaintiffs by the defendants who are the directors of the Salt River Project Agricultural Improvement and Power District (referred to herein as the District).

II

This Court has jurisdiction of this action under 28 U.S.C. § 1343 (1970). The action is brought under the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1970).

III

This matter is appropriate for determination by this Court under the federal Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq.* (1970). There exists herein an actual controversy calling for a declaration by this Court of the rights and other legal relations of the parties. The plaintiffs have been denied the right and opportunity to participate in District elections on an equal basis with all other qualified electors in the District. The defendants and their predecessors have enforced the unconstitutional voting scheme complained of herein since 1937. The plaintiffs desire and are entitled to participate in District elections with no conditions placed upon the exercise of their franchise. They are informed and believe and thereupon allege that the defendants will continue to enforce the unconstitutional voting system described herein and condition their participation in District elections upon the ownership of property.

IV

Plaintiffs FRANK SACCO and DWIGHT M. BRAHS are citizens and registered voters of the State of Arizona who reside within the geographical boundaries of the District. Each plaintiff has no interest in any real property located within the District. Each of the plaintiffs is substantially and directly affected by actions of the District and the defendants, each has been denied the right to participate in the District's elections and each desires to

exercise his elective franchise in District elections without discrimination and on an equal basis with all other qualified electors in the District. They bring this action on behalf of themselves and all others similarly situated.

V

Plaintiffs ROLAND W. JAMES, MARY FITZSIMONS, JAMES R. FITZSIMONS, and JOHN H. MAFFEO are citizens and registered voters of the State of Arizona residing within the geographical boundaries of the District. Each plaintiff has an ownership interest in a fractional acre of real property located within the District. Each of the plaintiffs is substantially and directly affected by actions of the District and the defendants, their right to vote in District elections has been abridged and debased by the voting system complained of herein and each desires to exercise his or her elective franchise in District elections without discrimination and on an equal basis with all other qualified electors residing in the District. They bring this action on behalf of themselves and all others similarly situated.

VI

This action is brought pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. It is proper that this matter be brought as a class action since: (1) each class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to each class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of each class; and (4) the representative parties will fairly and adequately protect the interests of each class. The defendants have acted and refused to act on grounds generally applicable to each class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to each class as a whole.

VII

Defendants GERMAIN H. BALL, ALEX M. CONOVALOFF, BILL ROUSSEAU, LEO C. SMITH, JOHN M. WILLIAMS, JR., THOMAS P. HURLEY, WILLIAM P. SCHRADER, JOHN S. HOOPES, W. LARKIN FITCH and THOMAS J. FINLEY are members of the Board of Directors of the District. Defendant KARL F. ABEL is President of the District. Pursuant to A.R.S. § 45-934 (1956), the defendants are authorized to establish and enforce rules and regulations of the District and to manage and conduct its business and affairs. They are responsible for enforcing the unconstitutional voting scheme complained of herein.

VIII

The District is organized under the Constitution and laws of the State of Arizona. CONST. Art. 13 § 7; A.R.S. § 45-901 *et seq.* (1956) (1974 Supp.) It is an agricultural improvement district and deemed a political subdivision of the State with all the rights, privileges, benefits, immunities and exemptions granted municipalities and political subdivisions under the laws of the State of Arizona.

IX

The District is the second largest provider of electric service in the State of Arizona serving approximately 240,000 residential, commercial, industrial and agricultural power users in its 2,900 square mile service area in three Arizona counties. The Phoenix metropolitan area containing approximately 50% of the State's population is located within the District. The District estimates that its electric revenues will be approximately $200 million in 1975, or approximately 98% of its total revenue.

X

In accordance with Arizona law, the District possesses certain powers and exemptions, including but not limited to the following:

(1) Exemption from regulation by the Arizona Corporation Commission, except that the Commission must authorize the issuance of revenue bonds, A.R.S. § 45-1065 (1974 Supp.) and approve power line transmission sites, A.R.S. § 40-360.03 (1974);

(2) Power to exercise right of eminent domain and to bring condemnation proceedings, A.R.S. § 45-939 (1956);

(3) Right of entry upon any land for any reason necessary to carry out the purposes of the District, A.R.S. § 95-940 (1956);

(4) Power to sell bonds, A.R.S. § 45-1041 *et seq.* (1956) (1974 Supp.) and

(5) Power to raise revenue through the levy of taxes on all real property located within its geographical area, § 45-1011 *et seq.* (1956).

XI

Plenary power to control and manage the affairs of the District and to carry out and execute the above-mentioned powers is granted by statute to the eleven member Board of Directors. The Board's powers include but are not limited to: the power to manage and conduct the business and affairs of the District; to make and execute all necessary contracts; to establish and enforce by-laws, rules and regulations necessary to carry on the business of the District; to acquire lands, easements and other property necessary or required for the uses and purposes of the District; to construct, maintain, operate and keep in repair all works and other property acquired and used for the District; and to exercise all powers of the District relative to the right of eminent domain and condemnation.

XII

Every two years, those eligible to vote in District elections choose the members of the Board of Directors. The franchise is restricted to those who are otherwise qualified

to vote and who are the "owner[s] of record of real property located within the boundaries of the district as of sixty days preceding a district election, and on which he has been assessed for county taxes . . . ." A.R.S. § 45-909 (1974 Supp.)

XIII

Under the acreage system of voting adopted by the District "each landowner possessing the qualifications of an elector shall be entitled to cast one vote . . . for each acre of land within the district owned by him." A.R.S. § 45-938B (1974 Supp.) Furthermore, those who own "less than one acre of land within the district shall be entitled to a fractional vote . . . equal to the fraction of an acre owned by such elector." A.R.S. § 45-983C (1974 Supp.)

XIV

Pursuant to the foregoing restricted system of voting, the defendants have adopted, implemented and enforced policies and procedures which burden, debase, restrict and deny the voting franchise in District elections of those who do not own real property in the District and those who own fractional acres of real property.

XV

By conditioning the right to vote of the plaintiffs and members of their respective classes upon property ownership, the defendants have denied them, under color of state law, rights protected under the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The restrictions on voting created by the statutes referred to herein establish classifications affecting fundamental rights absent any compelling or important state interest.

XVI

The District is engaged in the performance of important governmental functions and its conduct and actions affect the plaintiffs and members of their respective classes in important and substantial ways including but not limited to

their purchase and use of electricity provided by the District, flood control, the environmental and health consequences of the District's actions and the District's impact on the economy of its geographic area.

XVII

Plaintiffs have no adequate remedy at law since money damages cannot fully compensate them for the loss of their elective franchise complained of herein and plaintiffs will suffer and have suffered irreparable injury for the unconstitutional deprivation of their rights, privileges and immunities.

WHEREFORE, the plaintiffs demand judgment against the defendants, their successors, agents, servants and employees as follows:

(1) That a three-judge court be convened pursuant to 28 U.S.C. §§ 2281, 2284 (1970) to hear and determine this action;

(2) That pursuant to the federal Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq.* (1970), this Court declare that A.R.S. §§ 45-909, 983 (1974 Supp.) violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution; and that this Court further declare A.R.S. § 45-981B (1956) which establishes voting districts based upon acreage violates the Fourteenth Amendment of the United States Constitution;

(3) That this Court preliminarily and permanently enjoin and restrain the defendants from adopting, implementing and/or enforcing any system of voting in District elections based upon ownership of real property or upon any other qualification other than as required by A.R.S. § 16-101 (1974 Supp.);

(4) That this Court award plaintiffs' reasonable attorneys' fees and their costs incurred therein;

(5) That this Court grant such other and further relief as it deems just and proper.

DATED this 27th day of July, 1975.

/s/ Bruce Meyerson

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[Verifications omitted
in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROLAND W. JAMES, *et al.*, Plaintiffs, vs. GERMAIN H. BALL, *et al.*, Defendants.	CIV 75-498 PHX WEC ANSWER [Filed August 8, 1975]

COME NOW the Defendants GERMAIN H. BALL, ALEX M. CONOVALOFF, BILL ROUSSEAU, LEO C. SMITH, JOHN M. WILLIAMS, JR., THOMAS P. HURLEY, WILLIAM P. SCHRADER, JOHN S. HOOPES, W. LARKIN FITCH and THOMAS J. FINLEY, in their capacity as members of the Board of Directors of the Salt River Project Agricultural Improvement and Power District, and KARL F. ABEL, in his capacity as President of the Salt River Project Agricultural Improvement and Power District, by and through their undersigned attorneys, and for their answer to plaintiffs' Complaint, admit, deny and allege as follows:

I.

Plaintiffs' Complaint in its entirety, and in the alternative each separate cause of action, fails to state a claim against defendants upon which relief can be granted.

II.

The Court lacks jurisdiction over the subject matter insofar as the named plaintiffs and their respective classes are concerned, in that they can exhibit no constitutionally protected right which has been denied by defendants under color of state law.

III.

Defendants deny that they are properly-named defendants to this form of action.

IV.

Defendants deny each and every, all and singular, the allegations of plaintiffs' Complaint not expressly and specifically admitted herein.

V.

Answering Paragraph I of the Complaint, defendants admit that by certain allegations therein the plaintiffs attempt to invoke the Fourteenth Amendment of the United States Constitution. However, defendants deny the presence of the requisite need for injunctive and declaratory relief, of any action under color of state law or of any deprivation of protected rights, privileges and immunities. Defendants admit that they are the Directors of the Salt River Project Agricultural Improvement and Power District (referred to herein as the "District"), but deny that Defendant KARL F. ABEL has been sued in that capacity. Defendants deny each and every other or different allegation in Paragraph I of plaintiffs' Complaint.

VI.

Answering Paragraph II of plaintiffs' Complaint, defendants allege that, although this action is purportedly brought under the Civil Rights Act of 1871, this Court does not have jurisdiction of this action under 28 U.S.C. § 1343.

VII.

Answering Paragraph III of plaintiffs' Complaint, defendants allege that this matter is not appropriate for determination under the federal Declaratory Judgments Act, 28 U.S.C. § 2201, *et seq.* (1970), that there is no justiciable controversy, that defendants have not enforced any voting scheme or statute, that plaintiffs have not been denied any rights by these defendants, and that elections for the directors of the District will be carried out within the parameters of the law. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegation that plaintiffs desire to participate in District

elections with no conditions place upon the exercise of their franchise. Defendants deny each and every other or different allegation contained in Paragraph III of plaintiffs' Complaint.

VIII.

Answering Paragraphs IV and V of plaintiffs' Complaint, defendants deny that these plaintiffs have been denied any right to vote in the District's elections. Defendants are without information or knowiedge sufficient to form a belief as to the truth of the remaining allegations in Paragraphs IV and V of plaintiffs' Complaint and, therefore, deny the same.

IX

Answering Paragraph VI of plaintiffs' Complaint, defendants allege that they are without information or knowledge sufficient to form a belief as to the truth of some of the allegations about the plaintiffs and therefore deny that this purported class action is proper or that it fulfills the requisites of Rule 23 of the Federal Rules of Civil Procedure.

X.

Answering Paragraph VII of plaintiffs' Complaint, defendants admit the first, second and third sentences thereof. Defendants deny the fourth sentence of Paragraph VII of plaintiffs' Complaint and allege that they do not enforce any voting mechanism.

XI.

Defendants admit the allegations in Paragraph VIII of plaintiffs' Complaint.

XII.

Answering Paragraph IX of plaintiffs' Complaint, defendants admit the allegations therein, but add that only a part of the Phoenix Metropolitan area is located within the District, and not all electric users in the Metropolitan area or even the District area are served by the District.

XIII.

Answering Paragraph X of plaintiffs Complaint, defendants allege that, within certain limitations, restrictions and regulations, the District generally possesses particular powers and exemptions such as those set forth in A.R.S. §§ 45-1065, 40-360.03, 45-939, 45-940, 45-1041, *et seq.*, and 45-1011, *et seq.*

XIV.

Answering Paragraph XI of plaintiffs' Complaint, defendants admit that the Arizona statutes, within certain limitations, restrictions and regulations, grant the members of the Board of Directors of the District the power to control and manage its affairs and to carry out and execute certain powers such as those enumerated in said Paragraph XI of plaintiffs' Complaint.

XV.

Answering Paragraph XII of plaintiffs' Complaint, defendants admit the allegations in the first sentence thereof and further allege that the election of the Board of Directors of the District is in accordance with A.R.S. § 45-909.

XVI.

Defendants admit the allegations in Paragraph XIII of plaintiffs' Complaint.

XVII.

Answering Paragraph XIV of plaintiffs' Complaint, defendants deny each and every allegation therein and allege that the phrases "enforced", "burden" and "debase" should be stricken therefrom as redundant, immaterial, impertinent, scandalous and prejudicial.

XVIII.

Defendants deny each and every allegation in Paragraph XV of plaintiffs' Complaint.

XIX.

Answering Paragraph XVI of plaintiffs' Complaint, defendants allege that they are engaged in the functions authorized by the Arizona Constitution and law, specifically including Article 13, Section 7, of the Constitution, and the provisions of A.R.S. § 45-901, *et seq.*, and including those functions heretofore admitted. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations that defendants' conduct and actions affected these plaintiffs and the members of their particular classes.

XX.

Defendants deny each and every allegation of Paragraph XVII of plaintiffs' Complaint.

XXI.

Defendants do not agree that it is appropriate to convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 because plaintiffs have not demonstrated, and defendants believe plaintiffs cannot provide, the requisite showing for injunctive relief restraining the enforcement, operation or execution of a state statute by restraining the action of an officer of the state in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under said statutes on the grounds of the unconstitutionality of such statute.

XXII.

Defendants deny that plaintiffs are entitled to a preliminary injunction in this case.

WHEREFORE, defendants pray that plaintiffs' Complaint be dismissed and all relief requested thereunder be denied, that plaintiffs take nothing thereby, and for such other and further relief as the Court may deem just in the premises.

DATED this 18th day of August, 1975.

Respectfully submitted,

JENNINGS, STROUSS & SALMON

By /s/ J. A. Riggins, Jr.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROLAND W. JAMES, et al., Plaintiffs, vs. GERMAIN H. BALL, et al., Defendants.	No. CIV 75-498 PHX WEC STIPULATED STATEMENT OF FACTS [Filed February 24, 1976]

Plaintiffs and Defendants present herewith a joint stipulated statement of facts, along with exhibits, which they agree may be considered in connection with their simultaneously-filed cross Motions for Summary Judgment. The facts stated are admitted as true by both parties only for purposes of their respective motions for summary judgment.

Both parties contributed separate facts to the statement, but for sake of continuity it was agreed to organize the statement in the form presented. Nothing should be inferred from either the order or length of particular facts stated. Further, while admitting the truth of all facts stated, each party reserves the right to contest the materiality or relevance of any fact.

DATED this 24th day of February, 1976.

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JENNINGS, STROUSS & SALMON

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STIPULATED STATEMENT OF FACTS

I. PARTIES

A. Nature of Action

1. This action challenges the constitutionality of the landowner and acreage voting system of the Salt River Project Agricultural Improvement and Power District ("District"), an agricultural improvement district formed under the laws of the State of Arizona, A.R.S. § 45-901, *et seq.*, which is comprised of 260,188 acres located in Maricopa County, Arizona. The District and the Salt River Valley Water Users' Association ("Association"), a corporation organized under the laws of the Territory of Arizona in 1903, operate the Salt River Project, a federal reclamation project. (The phrases "Salt River Project" and "Salt River Reclamation Project" will be used synonymously herein to refer to the federal reclamation project.)

B. Plaintiffs

2. Plaintiffs FRANK SACCO and DWIGHT M. BRAHS are citizens and registered voters of the State of Arizona who reside on District lands. These plaintiffs have no interest in any real property located within the District. Each is not eligible to participate in the District's elections because he does not own real property as required by A.R.S. § 45-909 (1975 Supp.). It is agreed that there are many others similarly situated. These two plaintiffs desire to vote in District elections on an equal basis with all persons residing within the District and otherwise qualified to vote for state officers.

3. Plaintiffs ROLAND W. JAMES, MARY FITZSIMONS, JAMES R. FITZSIMONS and JOHN H. MAFFEO are citizens and registered voters of the State of Arizona residing on District lands. Along with a substantial number of others, these plaintiffs have ownership interests in fractional acres of real property located within the District, and are entitled to cast a fractional vote in District elections.

Each of these four plaintiffs desires to exercise his or her elective franchise in District elections on an equal basis with other persons residing within the District and otherwise qualified to vote for state officers.

C. Defendants

4. Defendants GERMAIN H. BALL, ALEX M. CONOVALOFF, BILL ROUSSEAU, LEO C. SMITH, JOHN M. WILLIAMS, JR., THOMAS P. HURLEY, WILLIAM P. SCHRADER, JOHN S. HOOPES, W. LARKIN FITCH, THOMAS J. FINLEY and KARL F. ABEL are the members of the Board of Directors of the District, and its President, respectively.

II. HISTORY OF RECLAMATION IN THE SALT RIVER VALLEY

A. The Salt River Federal Reclamation Project

5. Irrigation of the Salt River Valley, within which the Association and the District boundaries lie, was begun by settlers in about 1867. The river flow was erratic, varying from a small stream to enormous floods. Shortly after settlement began, especially during years of drought, the supply of water at low river stages was inadequate for the land in cultivation. River flows in excess of immediate needs or canal capacities were lost, due to the lack of storage facilities. Maintenance of the brush and rock diversion dams also became a problem, for they were often washed out at the beginning of a flood and could not be replaced until the water was again low in the river. Years of good water supply were followed by years of drought, causing the loss of valuable vineyards, farm lands and orchards. In 1895 a few of the farmers in the Valley formed what they called the "Farmers Protective Association", the prime purpose of that Association being to secure legislation concerning water rights. Various farmers from the Salt River Valley were instrumental in lobbying the Reclamation Act of 1902 through the United States Congress for the purpose of securing comprehensive federal assistance for the systematic reclamation of lands of the Salt River Valley. The Salt

River Project was originally authorized by the Secretary of the Interior on March 14, 1903, in accordance with the Reclamation Act of 1902 (32 Stat. 33), and was the first reclamation project authorized under the Federal Reclamation Act.

6. Shortly after the authorization of the Salt River Reclamation Project, the federal government established a Board of Survey to determine what lands were capable of being benefited for agricultural purposes by the Project. In selecting those lands, the Board of Survey excluded lands actually put to urban uses (referred to as "townsite lands"). The area so designated by the Board Survey as eligible for Salt River Project water is referred to as the "Salt River Reservoir District."

7. After authorization of the Salt River Project in 1903, the Government constructed a large dam and reservoir on the Salt River known as the Theodore Roosevelt Dam. It also purchased and consolidated the various canals, ditches and other distribution facilities to form a highly developed irrigation system within the Salt River Project area.

B. Salt River Valley Water Users' Association

8. Immediately after the Salt River Project was created, the United States needed a contracting entity to assure repayment of construction costs allocated to each benefited landowner under 43 U.S.C. § 461 *et seq.* for construction of Theodore Roosevelt Dam. The Salt River Valley Water Users' Association was organized as an Arizona corporation under the laws of the Territory of Arizona in 1903 to serve as the entity with which the United States could deal as representative of the landowners for whose benefit the irrigation system was being constructed. The Articles of the Association were worked out by the joint effort of the landowners under the proposed project and the officials of the United States Reclamation Service. Shareholders of the Association are the owners of land which has been subscribed into the Association.

9. The contract between the Association and the United States providing for cooperation between the Association shareholders and the United States Government in the construction and financing of the Salt River Project was entered into on June 25, 1904, and is attached hereto as Exhibit B. In the 1904 contract the Association assumed the obligation to repay to the United States all construction charges owed to the United States by its member-shareholders for the irrigation system constructed for their benefit. The Government required membership in the Association as a condition of receipt of stored and developed water from the reclamation project. Exhibit B, Para. 2. The Secretary of the Interior reserved the right to approve or prescribe by-laws of the Association pertaining to water use and administration of the Association. Exhibit B, Para. 8.

10. The irrigation system for the lands of the Association's shareholders was operated by the United States Reclamation Service up to September 6, 1917, when the United States Government and the Association (after approval of the contract at an Association shareholders' election) entered into a further contract (attached hereto as Exhibit C) by which the operation, maintenance, and control of the Salt River Project were vested in said Association subject, however, to termination by either party in the manner therein stated, and the payment of the construction charges amounting to $10,166,021.97 due the United States.

11. Under the 1917 contract and later amendments thereto, the Association has operated and maintained, and is now operating and maintaining, the Salt River Project water delivery system and has under its Articles and By-Laws levied and collected assessments upon the lands of its shareholders to pay for operation and maintenance, for the construction charges due the United States, and for the improvements, additions and betterments of the said works made from time to time by the Association.

12. Before the management of the Salt River Project was taken over by the Association, the United States had constructed as incident thereto with government and Association funds, a hydroelectric power system, at a cost of approximately $4,500,000, to produce power to be used by the Association in support of its primary irrigation activities.

13. In order to protect its investment, and increase the revenue therefrom and the amount of water available for irrigation, the Association undertook in the 1920's and 1930's to increase the number of water storage and hydroelectric facilities. In addition to Mormon Flat Dam, constructed in 1923-25, the Association constructed Horse Mesa Dam in 1924-27 and Stewart Mountain Dam in 1928-30.

14. The Association contracted with the United States on November 6, 1935 (Exhibit F herein), later supplemented on October 14, 1936 (Exhibit G herein), for the construction of Bartlett Dam to store water on the Verde River, and for various repairs to Project works. Of the $7,500,466 cost of that project, the Association assumed the obligation to repay to the United States $6,550,361. Of the latter amount, $725,282 remains unpaid by the Association as of December 31, 1975.

15. Until 1937 the Association continued to manage, operate and maintain the Salt River Project directly. Financing for expansion of the water and power system was obtained through the sale of corporate bonds of the Association, secured by lien upon Association subscribed lands, as reflected in the list of bond issues set forth in Paragraph 50, *infra*.

16. The primary purpose for the acquisition and construction of the Salt River Project under the Federal Reclamation acts was for the development, storage and distribution of water for the irrigation of arid and semi-arid lands. The development, storage, and distribution of water to Association-subscribed lands was the primary purpose of

the Association in contracting with the United States to guarantee the repayment of construction funds and to operate the Salt River Project.

17. The development and sale of electrical power in connection with the Salt River Project by the United States and by the Association was undertaken not for the primary purpose of providing electricity to the public but to support the primary irrigation functions by supplying power for reclamation uses and by producing revenues which could be applied to increase the amount and reduce the cost of water to Association subscribed lands.

18. The Association under its current Articles of Incorporation derives its income from the following sources:

(1) Mandatory Water Assessments. (Art. XII, § 3(b)).

(2) Additional Water Delivery Charges. *Id.*

(3) Power Revenues. (Art. XII, 1, First.)

(4) Stock Assessments. (Art XII, § 1, Second, § 4.)

The Association's ultimate financing power if other revenues are insufficient is its acreage assessment power, which was last exercised in 1951. Association assessments when levied remain until paid a lien on the lands of the shareholders against which they are levied and on the stock appurtenant thereto.

The rights and obligations of membership in, and subscription to the Articles of, the Association are appurtenant to the land and run with the land.

III. THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

A. History

19. In the mid-1930's the Association sought for a means of reducing the expenses of the operation of the Project, including interest expense. It therefore occurred to the officers of the Association that if a District could be organized under the Agricultural Improvement District Act which would issue its bonds for the purpose of providing money to take up the outstanding bonds of the Association, the bonds of the District could be placed at a much lower rate

of interest than those issued by the Association as a private corporation, and the shareholders of the Association, who, of course, would ultimately pay the District bonds, would thus be saved a very large sum of money each year. The Agricultural Improvement District Act provided for the organization of Districts which would be authorized to provide means of irrigation to the lands within such districts.

20. The Agricultural Improvement District Act, Revised Code of 1928, §3467 through 3514; 1922 Laws, Ch. 23, allowed creation of districts to be governed by three- or five-member boards. R.C. §3471. Such districts could be formed only within federal reclamation projects. R.C. §3467. All landowners were entitled to one vote each in the elections of such districts. R.C. §3473. Such districts enjoyed an *ad valorem* taxing power on real property within the District. R.C. §3498.

21. In January 1936, proceedings were initiated before the Maricopa County Board of Supervisors to create an agricultural improvement district coextensive with the boundaries of Association member land. Many shareholders of the Association objected to the formation of a district or contracting with it by the Association since voting in the district was per capita rather than by acre as in the Association. Many shareholders were also opposed to the *ad valorem* taxing power of the proposed district. The Association, therefore, determined not to proceed with final formation of a district until those and other objections could be resolved.

The Association therefore requested amendment of the Agricultural Improvement District Act to allow all landowners to vote on an acreage basis, and to establish a one-acre minimum for voting, as was the practice under Association elections. The Association also requested amendment of agricultural improvement districts' taxing power from *ad valorem* to acreage to conform such taxing power to the assessment power of the Association.

The Association also requested that the Legislature amend the Agricultural Improvement District Act by including among the purposes of such districts the reduction of the cost of irrigation, drainage and power to the owners of the land in the district by the sale of surplus water or power, the financing or refinancing as its own obligation of debt incurred or proposed to be incurred by any public or private agency in the construction, maintenance, improvement or replacement of the structures and equipment necessary or useful for the accomplishment of any of the purposes of the District. Cf. A.R.S. § 45-903 A 7 and 8.

22. The Legislature in November 1936 (Laws 1st Sp. Sess. 1936, c. 10) enacted the amendments requested by the Association.

The acreage taxing power of agricultural improvement districts (A.R.S. 45-1014) is now identical to the assessment power of the Association, in that District taxes are assessed on an acreage basis and become liens upon lands until paid (A.R.S. § 45-1015 B [1956]), and therefore have the same effect as Association assessments.

23. The officers of the Association caused a District to be organized under the Act encompassing the land which had subscribed to Association membership, provided for the issuance by the District of $13,000,000 of its bonds, and then caused a contract to be entered into between the District and the Association, the substance of which was, *inter alia*, that the District was to issue bonds and turn the proceeds over to the Association, and levy the necessary taxes to pay the bonds as they became due, while the Association was to use the proceeds of the bonds to pay off $13,000,000 of its outstanding indebtedness, and to collect from its members a sufficient amount of money to reimburse the District for the amount of taxes it was compelled to levy to meet the new bonds. The relationship between the Association and the District has often been described by the Arizona Supreme Court as one of "alter egos in substance, though not in law." The ultimate result of these transac-

tions and the District's status as a municipal corporation, with its securities exempt from taxation, has been a savings of millions of dollars to the shareholders of the Association.

24. Under the terms of the contract of March 22, 1937 between the Association and the District (Exhibit H, *infra*), the Association transferred, subject to the paramount interest of the United States, all its property to the District and agreed to continue to perform all its obligations in connection with the care, operation, and maintenance of the Salt River Project on behalf of the District. The District agreed to provide capital and operating funds to the Association to support the operation of the Project by the Association. As amended in 1944 and 1949, the contract now provides that the District itself operate the power function of the Salt River Project. The Association continues to operate the water delivery system as an agent for the District.

25. In the 1940's the Commissioner of Internal Revenue asserted deficiencies in income tax against the Association for power revenues applied to offset water costs without deduction for losses incurred in water operations. The Association set up a variety of defenses to this assessment, but in 1949 the dispute was settled by the payment of $100,000 in satisfaction of all past assessments. As a part of this settlement, the Association amended its 1937 contract with the District to have the District assume the actual operation of the power system to make clear that the revenues of the power system are exempt from federal income taxation under the then Section 116 of the Internal Revenue Code, which excludes from gross income any income derived from any public utility or the exercise of any essential governmental function and accruing to any state, or any political subdivision of a State. Subsequent to this settlement and to the 1949 amendment to the 1937 contract, power revenues continue to be applied to offset the deficits in water operation costs and are not considered by the IRS to be taxable income to the Association.

(The Commissioner of the IRS was apparently in error in refusing to allow any deduction for losses sustained in the water operations by the Association, as is now indicated by *Anaheim Union Water Co. v. Commissioner*, 321 F.2d 253 (9th Cir. 1963). The *Anaheim* case allowed non-profit water companies which furnished water and water services only to their shareholders to deduct against oil royalties, rentals and miscellaneous income the entire amount of the water costs including those in excess of charges to the shareholders for water services.)

B. Administration and Voting of the District

26. The statutes allow two forms of administration for agricultural improvement districts. Under the first, A.R.S. § 45-931 through § 45-942, a district is governed by a Board of Directors of between three and nine members. A.R.S. § 45-981 B. The District is governed under the alternate form, A.R.S. § 45-961 through 45-968, which allows for governance by a ten-member Board of Directors (the President is also an ex officio member) and a thirty-member Council. The District is divided into ten division, each of which elects one Director and three Council members. A President and Vice-President are elected at large. The boundaries of the electoral divisions of the Association and the District are virtually identical. The alternative form of administration is virtually identical to the governmental structure of the Association.

27. The statute allows for equal voting among qualifying landowners, or for acreage voting if so requested in the organization petition. The petition for organization of the Salt River Project Agricultural Improvement and Power District provided for elections on an acreage basis after the initial organization election. A.R.S. § 45-983. The election for formation of the District, however, was conducted on a one man, one vote basis among qualifying landowners. After the formation of the District, its elections have been conducted on an acreage basis.

28. To qualify to vote in District elections, electors must own taxable property within the District and possess the qualifications required of electors for state officers. Otherwise qualified electors of the District need not reside within the District to be entitled to vote their land in District elections. A.R.S. § 45-909.

29. In 1969 the Legislature amended the District's voting system to allow owners of fractional acreage to vote fractionally. A.R.S. § 45-983 (1975 Supp.). In the same year the Association amended its Articles of Incorporation to allow identical voting of fractional shares. Previously, a one-acre minimum landholding was required to vote in District and Association elections. Association Articles, Art. VII, §2. The effect of these changes was to give individual landowners a vote in Association and District elections in proportion to the lien on their land. As land use changes from agricultural to urban uses, therefore, the degree of urban participation allowed in District elections proportionately increases.

30. General elections of the Association and of the District are conducted simultaneously at the same locations by the same election officers on the first Tuesday of April of each even numbered calendar year. The Association elections are conducted pursuant to Article VII of its Articles, the District elections are conducted pursuant to A.R.S. § 45-981 through 45-992 (1956 and 1975 Supp.).

C. District-Association Relationship

31. To the extent that the Association and the District have identical boundaries, identical constituencies, and identical purposes, there has been since 1937 a close cooperation and consistent agreement over policy between the two in the management of the Salt River Project. The management staffs of the District and of the Association have been the same since shortly after the District took over operation of the entire Project in 1949.

32. The District was formed by the Officers of the Association, with the cooperation of the Legislature, for the immediate purpose of refinancing as its own obligations outstanding debts and of refinancing future debt in connection with the Salt River Project, all at the more advantageous interest rates available to municipal corporations. The mechanism for achieving this purpose was to form the District, assign to it the Association property rights and duties, and authorize it to perform contract obligations, which would serve the same purpose and ends which the Association has served and pursued.

33. The Association and its member landowners would not have transferred title to its property and control of the Salt River Project, including the power system, to a public body governed under a voting system without acreage voting and open to all qualified state electors solely on the basis of residence on District land.

34. The District was organized for the purpose of continuing the operations of the Association, the principal objective of which was to provide water for use within the geographic boundaries of the Association and District. Landowners were the intended beneficiaries *inter alia* because electric revenues were to be used to reduce the cost of development, storage and distribution of water to District lands. Subsequent to its formation in 1937, the District has continued to use electric revenues to defray the expense of providing water to District lands. The primary legislative purpose of the District is to provide water to District lands.

D. District Voting Information and Statistics

35. As of August 1975, 141,474.61 acres within the District were eligible to be voted in District elections. This is approximately 60% of the total number of acres within the District, excluding streets, alleys, canal rights-of-way, and

the Salt River riverbed. (Property held by corporations, municipalities, or other governmental bodies may not be voted, but property held by municipalities or other governmental bodies is not subject to the District's taxing power.)

36. The following table shows the number of people voting in District elections since 1970 and the total number of acres voted:

Election Year	Number of Voters	Number of Acres Voted
April 7, 1970	621	19,074.24
April 4, 1972	984	43,068.98
April 2, 1974	561	15,219.73

37. Between 1937 and 1974 the relative land uses in the District changed from 5.6% urban and 94.4% agricultural to 47% urban and 53% agricultural. (For the purposes of these statistics it is arbitrarily assumed that land parcels of one acre or less are urban and larger parcels are agricultural.) In 1974, 22.4% of all water delivered by the District and Association was delivered to municipalities; 15.% was put to other nonagricultural uses, and the balance was used in agriculture. Portions of eight Arizona municipalities are located within the geographic boundaries of the District — Phoenix, Mesa, Tempe, Scottsdale, Glendale, Chandler, Peoria, Tolleson and Gilbert. Substantial numbers of persons in the Phoenix metropolitan area reside on District lands.

E. Criteria for Inclusion of Lands Within District Boundaries

38. All lands included within the boundaries of the District were lands susceptible of irrigation by the same general system of irrigation works. Lands otherwise within the exterior boundaries of the District but excluded from the boundaries of the District were lands which would not be benefited generally or especially by the irrigation works of the District. The total acres as established by order of the Board of Supervisors on January 25, 1937 is 260,188 acres. At present, the total number of acres in the District, excepting canal rights-of-way, streets, alleys, and the Salt

River riverbed, is 236,482.66 acres. The total area excluded from the District but lying within the exterior boundaries of the District is 84,131 acres. Those areas excluded because they are not susceptible to irrigation by reason of high ground amount to a total of 39,494 acres. Approximately 35,021 acres are excluded from District boundaries because owners of the lands had not subscribed them into the Association, including 1,245 acres in the North Tempe area, 20,636 acres in the Salt River Indian Reservation, 7,720 acres in the South Chandler Water Conservation District, and 5,420 acres in the Peninsula-Horowitz and Maricopa Garden Farms area. Approximately 9,136 acres of land otherwise within the exterior boundaries of the District were excluded because they were townsite lands not eligible for reclamation project stored and developed water. (In addition to this, there are 480 acres in the City of Tempe entitled only to normal flow water, which are treated the same as townsite lands.)

F. Water Functions of the District

39. A comprehensive adjudication of water rights within the reservoir district was handed down by the District Court for the Third Judicial District of the Territory of Arizona on March 1, 1910, in the case of *Hurley v. Abbott* (the Kent Decree). Under that Decree, the normal flow of the river was found to have been appropriated to approximately 151,000 acres of land, and those vested water rights were confirmed. Rights to share in the additional water stored and developed by the reclamation project are shared equally among all land subscribed to Association membership. Lands not subscribed to Association membership have no right to share in reclamation water, and are limited to receipt of the normal flow water appropriated before the Kent Decree. The Kent Decree remains the governing determination of surface water rights in the Salt River reclamation reservoir district.

40. All surface water rights in the Salt River Project are appurtenant to the land under Arizona water law or proportionate to the land under federal reclamation statutes and the Articles of the Association. Rights to stored and developed water above the normal flow of the river are divided equally among all acres of Association (and District) land.

41. The water which the Association, as agent for the District, delivers to municipalities is, first the vested water rights of the municipality itself and of land owned by the municipality, and, second, the appropriated and stored and developed water appurtenant to or allocated to District or townsite lands within the corporate limits of the municipality and which the owners have not sought to have delivered directly by the Association. By contract the municipalities receive appropriated and stored and developed water which is appurtenant to or allocated to city land as agent for the owners of the land to which said waters are appurtenant or allocated; the city then pays on behalf of the landowners the assessments and water charges chargeable to the owners of the land. The cities then assume the responsibility to deliver the water to the lands entitled to receive it. Landowners may still receive from the Association (at the high point of the quarter section in which the land is located) any and all waters to which their land is entitled, although some landowners find it more convenient to accept delivery of their water through the cities. Since the municipalities take water from the Association either as appropriators or as agents for the landowners and in proportion to the water rights of the landowners, the assessments and charges made to municipalities for water delivered to them are the same as the assessments and charges made to other landowners for the delivery of their water. (Water trades are sometimes made for the convenience of the parties in which District water is used outside the District in exchange for which an equal amount of non-District water is brought into the District.)

Water is fungible. If the cities receive water from sources other than the District and mix it with District water, the water actually delivered by the cities to the landowners may not be able to be distinguished as to the sources from which it came.

42. The District provides water to eight cities in Maricopa County for municipal use. During 1974 the District provided water as follows:

City	Acre-feet from SRP	Percent from SRP
Chandler	707	14%
Gilbert	304	35%
Glendale	9,995	68%
Mesa	3,313	15%
Peoria	764	81%
Phoenix	122,974	61%
Scottsdale	2,471	40%
Tempe	19,814	92%
	160,342	59%

In 1975 these eight cities and towns paid a total of $620,699.85 to the Association in water assessments and delivery charges.

43. The landowning and acreage voting requirements of the Association and the District are intended to allocate to land and water interests the control of the affairs of the Association and the District, in proportion to the varying amounts of water rights and financial burdens borne by the various voters, because of the following considerations: (1) The acreage lien for general obligation bonding, A.R.S. §45-1047, (2) The acreage taxing power under A.R.S. §45-1011, *et seq.* (which has thus far not had to be used), (3) The Associations's acreage assessments for water, and, (4) The land proportionate basis of stored and developed water rights under federal reclamation law and the Articles of Incorporation of the Association and the somewhat land proportionate basis of appropriated water usage.

44. The District and the Association now service the water rights of 238,269.90 assessed acres of land. Normal flow water rights of some non-member lands, as established in the Kent Decree, are also served. The reclamation system has a 2,072,050 acre feet storage capacity in six reservoirs, and an 812,506 acre-feet groundwater pumping capacity. The water is distributed by 131 miles of major canals, 875 miles of laterals and 263 miles of drainage or waste ditches. The Association and the District administer the water rights established in the Kent Decree.

45. During the last ten years about 83% of the water system costs have been financed with power revenues. In 1974, revenues from water and irrigation activities were $2,613,184. The expenses, including depreciation, for irrigation and water operations exceeded revenues by about $14,000,000, and that deficit was met from power revenues. Water support has averaged approximately $10,000,000 annually since 1965. These amounts do not include expenditures for additions and improvements to the irrigation plant for repayment of long-term debt, which must also be met from power revenues. Any decrease in support from power revenues would have to be met from increased water delivery charges.

G. Power Function of the District

46. The District serves approximately 240,000 electric customers, of which approximately ninety percent (90%) are residential customers. Approximately 85% of the District's electric customers reside within the geographic boundaries of the District. A detailed summary of the District's electric operations is contained in Exhibit K which is a copy of the Official Statement for 1976 Series A Revenue Bonds. During 1974 revenues from the sale of electricity were $168,057,000 or ninety-eight percent (98%) of total revenues.

The District provides a reliable supply of essential electric energy and water in substantial portions of the Salt River Valley; thus, the District operation is important to the development of the Salt River Valley.

47. The District does not, and is not required to, serve electricity to all member lands; and it serves large areas outside of its boundaries. In 1955 the Arizona Corporation Commission and the Secretary of Interior approved an agreement between Arizona Public Service Company and the District establishing the service territories of each. Generally speaking, Arizona Public Service Company serves electricity to approximately 15% of the District area. The agreement resulted in (i) continuance of service by District to rural areas then served by it, even though such areas were later annexed by the cities in which APS was serving, (ii) the District withdrawing from retail service in certain areas and the assumption of service by APS, and (iii) APS agreeing to purchase from District at wholesale, the power requirements necessary to supply the retail sales in the areas where the District discontinued service.

48. By its Articles of Incorporation, the Association is obligated to compensate shareholders who pay substantially more for electricity used on Association land and purchased from public service corporations for domestic and ordinary farm purposes than shareholders who purchase electricity directly from the Association. By its contract of 1937, as amended, the District has assumed this contractual obligation of the Association to resident landowners. The District has on one occasion in the past discharged this contractual obligation of itself and of the Association to compensate District landowners for the difference in electricity costs between what they have paid public service corporations and what they would have paid the District for equivalent kinds of electric service.

H. Financing of the Salt River Project by the District and the Association

49. The District's long-term debt consists of General Obligation Bonds and Electric System Revenue Bonds. General Obligation Bonds outstanding are portions of eleven different issues sold between 1950 and 1972. All General Obligation Bonds were and are guaranteed by the Association.

Original amounts of outstanding issues	$358,970,000
Amounts paid at maturity	52,510,000
Bonds reacquired and cancelled	1,830,000
Bonds refunded	13,470,000
Total Outstanding	$290,980,000

These bonds are secured by a lien on all taxable real property within the District's boundary. The outstanding principal represents a potential tax totaling $1,221.25 per acre, not including the interest requirements. Outstanding General Obligation Bonds are not scheduled to be retired until 2003. Revenue Bonds outstanding totaling $600,000,000 were sold between 1973 and 1976. The first principal maturities come due in 1976. These bonds are secured by a pledge of revenues. Their lien on revenues is junior to the lien of the General Obligation Bonds.

50. Before the District began financing the Association, bonds were issued in six issues totaling $12,683,000. These bonds were sold at various dates between February 1, 1923 and November 1, 1938. The final maturity of Association bonds was in 1958. All these bonds were either paid at maturity out of Association revenues or refunded by District bonds. In addition, there were three issues of Agricultural Improvement bonds totaling $2,343,000. These were sold between May 1924 and February 1925. The Association guaranteed payment and in two cases pledged specific electric revenues to guarantee payment. Drainage District bonds totaling $125,000 were assumed as a general obligation of the Association on October 24, 1924.

51. In addition to the District bond issues summarized in paragraph 48, between 1938 and 1948 the District borrowed $24,371,000 in five bond issues which have been entirely repaid or refunded. Of that amount, $10,905,000 was borrowed to refund past indebtedness. All these debts were guaranteed by the Association. The last of these bonds were retired by July 1, 1975.

52. In addition to the original interest-free construction and acquisition funds which were repaid by 1955, since 1950 the United States has advanced to the Association $21,950,470 in interest-free loans for rehabilitation and betterment of project facilities, of which $10,881,063 has not yet been repaid to the government. Rehabilitation and betterment of the project works is being accomplished under the authority of the Act of October 7, 1949 (63 Stat. 724) as amended.

53. The current financial condition of the District as of December 31, 1974 is as reflected in the attached 1974 annual report (Exhibit L), pages 11 through 19. The current operations and activities of the District are as reflected in the attached 1975 annual statement, pages 20 and 21.

54. In summary, the plant investment per assessed acre of the District as of the end of 1974 was approximately $3,500.

55. Because of the past and continuing substantial investment for the development, storage and distribution of water to the Association and Distric lands, said lands have been assured of a reliable supply of water at a reasonable cost for the indefinite future. Because of the assurance of this indefinite supply of water, the assessed valuation of agricultural lands within the District and the Association is generally twice the assessed valuation of comparable agricultural lands outside the boundaries of the District and the Association.

56. Viewed as a percentage of gross power revenues, the amount of District power revenues utilized to meet water costs is approximately equivalent to the dividends paid to common stockholders in comparable electric utility companies.

I. District Tax Payments

57. Since 1963 the District has been authorized to make voluntary contributions in lieu of property taxes by A.R.S. § 45-2201 *et seq.* (1975 Supp.). These contributions are based on the value of property used by the District for the generation, transmission and distribution of electrical energy and upon the same assessment percentage applicable to utilities. In substance, the electrical facilities of the District are taxed the same as privately owned electric utility property.

58. Tax payments by the District in the last ten years include the following:

	Voluntary Payments in Lieu of Property Taxes	Ad Valorem Property (N.M., Nev. & Colo. Taxes)	Sales	Payroll	Total
1966	1,903,255		1,166,673	558,288	3,628,216
1967	2,675,989		1,246,953	624,552	4,547,494
1968	1,542,336	5,724	1,876,763	731,251	4,156,074
1969	4,506,785	76,068	2,442,366	849,600	7,874,819
1970	4,175,409	228,718	2,772,673	936,233	8,113,033
1971	5,490,727	371,813	3,175,105	1,075,409	10,113,054
1972	6,253,502	430,766	3,860,503	1,210,581	11,775,352
1973	6,644,077	411,427	2,703,628	1,753,523	13,512,655
1974	12,149,751	516,588	6,382,393	2,220,780	21,269,512
1975	16,621,310	(	—Not Available—		)
Total	61,963,141				

IV. MISCELLANEOUS

59. The secretary of the interior has comprehensive power under Federal reclamation statutes and the contracts between the United States and the Association and the District to supervise the District and the Association's

management of the Salt River Project, including the power operations. 43 U.S.C. § 498, 499, 500. The Secretary has never revised rates set by the District.

60. Although the District has an obligation to continue to use electric revenues to reduce the cost of water delivery, the precise amount of the subsidy is not fixed. District electric customers (particularly those who are not water users) might want to reduce the amount of the subsidy, whereas farmers, ranchers and others who economically benefit from less expensive water would undoubtedly oppose any substantial reduction in the subsidy level. Therefore, should the voting constituency of the District be changed as requested by plaintiffs, conflicts in the joint conduct and management of the water and electric operations would probably result between the District and Association which could interfere with the present harmony of operation. This would make it more difficult to borrow funds and would increase interest rates. An initial change in composition of the District Board of Directors would, because of concern in the financial community about instability of management, result in greater difficulty and higher cost of borrowing capital funds. It would be difficult to predict the long-range effects of such change.

61. The District has operated and continues to operate an "area development function" which responds to inquiries from firms considering locating offices in Phoenix. District area development people have worked with the following firms which have located in the Valley: Sperry Information Display Systems, Greyhound Corp., Capitol Foundry, Applied Materials, Digital Equipment, G. D. Searle, Co., Data Packaging, Motorola, Revlon, Marathon Steel, Honeywell, Rogers Corp., Talley Industries, Western Electric, Siemens, and General Instruments.

62. There are approximately 326 miles of transmission lines, 2,570 miles of overhead distribution lines and 1,124 miles of underground distribution lines located within the District's geographical boundaries. The District has 4 gen-

erating stations, 9 bulk power receiving stations, 64 residential distribution stations and 15 industrial distribution stations located within the District.

63. There have been occasional protests concerning the presence and location of power lines and towers.

64. The Salt River, which runs through the District's geographical area, is normally dry, but occasionally flows as a result of heavy runoffs from storms over which the District has no control. The occasional major quantities of water which have flowed in the Salt River in the last decade have been the result of sheet runoff into the river below Granite Reef Dam and releases from reservoirs operated by the District. The District has control of the reservoir outlets, but no control over the amount of water which flows from the Salt and Verde Rivers and Tonto Creek and various washes and creeks into the reservoirs or inflows into the canal system and Salt River below Granite Reef Dam. During the months of December 1965, and January, February and March of 1966, 551,504 acre-feet of water were released into the Salt River below Granite Reef. The water in the Salt River in 1965 destroyed or damaged all principal SRP transmission lines crossing the river, and it was reported that over 2,000 people temporarily left their homes. Service outages affected no more than 20% of the SRP service area, although approximately 30-40% of the then current electric load was involved to some degree. The remainder of the SRP electric service area was not affected in any significant way by the water.

During 1973, the District released 1,239,506 acre-feet of water from its reservoirs to accommodate heavy runoffs from watersheds. The releases of water in 1973 and 1965-66 were necessary because the reservoirs had reached a point beyond which they could not safely be filled further. The Bureau of Reclamation was kept informed of and concurred in the decisions to release water on both occasions.

On September 4, 1970 a rainfall of 100 year return frequency occurred in the watershed which is contributory to the Arizona Canal and Pima Road intersection in Scottsdale, Arizona. The Arizona Canal overflowed at that location, carrying sheet runoff, contributing to the flooding of homes located in subdivisions south of the canal, and it was reported that flood damage affected 1,000 homes. Owners of 220 flood-damaged homes brought suit against the Association and the District; total damages from the flood were agreed to be $720,345.45, although the Association and the District contest any liability on their part, and the District was dismissed from the suit by directed verdict.

The Arizona Canal and all other Project canals and ditches are intended and designed for irrigation; they are not flood control devices and were never intended as such. *Ramada Inns, Inc. v. Salt River Valley Water Users' Association,* 111 Ariz. 85, 88, 523 P.2d 496 (1974). Irrigation canals are designed and built entirely differently from flood control canals. Arizona statutes do not allow the District to engage in flood control functions. *Cf.* A.R.S. § 45-903 (1956). Federal Reclamation statutes do not allow the District to alter irrigation distribution facilities so as to accommodate natural runoff. 43 U.S.C.A. § 421 A (1975 Supp.) Nor may the District make major changes in Project facilities without the consent of the Bureau of Reclamation.

Any flood control benefits of the District's activities are only those naturally incident to the impoundment of water from natural water courses and the carrying capacity of the canals at any given time. The District may not under State or federal laws sacrifice its irrigation purposes to achieve flood control ends.

The Maricopa County Flood Control District and the Army Corps of Engineers are the state and federal agencies charged with flood control in the Salt River Valley.

65. The following documents and contracts attached hereto and designated Exhibits A through J, submitted by defendants, are true, accurate, authentic and complete copies of the documents which they purport to be; all facts recited in any such documents are true as of the dates of the documents in which they are recited; it is further stipulated that all legal rights, duties, liabilities, and relationships which the following documents purport to create or establish are true, valid, and binding according to the terms of said documents.

Exhibit A. Articles of Incorporation of the Salt River Valley Water Users' Association, as amended through April 4, 1972.

Exhibit B. Contract of June 25, 1904 between the Association and the United States.

Exhibit C. Contract of September 6, 1917 — Agreement providing for transfer of care, operation and maintenance of the Salt River Project to the Association.

Exhibit D. Contract of July 26, 1922 between the Association and the United States — Supplemental Agreement to 1904 and 1917 Agreements.

Exhibit E. Contract of April 25, 1928 between the Association and the United States — Amended and Supplemental to July 26, 1922 Agreement.

Exhibit F. Contract of November 26, 1935 between the Association and the United States — contract providing for construction of Bartlett Dam and repairs to project works.

Exhibit G. Contract of October 14, 1936 between the Association and the United States — supplemental to November 26, 1935 contract.

Exhibit H. Contract of March 22, 1937 as amended on February 28, 1944 and September 12, 1949 between the Association and the District approved by the United States transferring property of the Association to the District and delegating from the Association to the Dis-

trict the operation of the Salt River Project, with the Association retaining the irrigation functions of the project.

Exhibit I. Contract of June 30, 1950 between the Association and the United States amending the contract of September 6, 1917.

Exhibit J. Resolution of Maricopa County Board of Supervisors establishing Salt River Project Agricultural Improvement and Power District dated January 25, 1937.

66. The factual and statistical date contained in the following documents submitted by defendants are true as of the date of each document.

Exhibit K. Official statement for 1976 Series A Revenue Bonds, dated January 22, 1976.

Exhibit L. Salt River Project Annual Report 1974.

Exhibit M. Salt River Project Annual Report 1973.

Exhibit N. Salt River Project Annual Report 1972.

Exhibit O. Salt River Project Annual Report 1971.

Exhibit P. Salt River Project Annual Report 1970.

67. The following document, offered by plaintiffs, attached hereto and designated Exhibit Q, is a true, accurate, and complete copy of the document which it purports to be:

Exhibit Q. March 18, 1969 resolution of the Board of Directors of the District endorsing a change in District elections which would allow voting on a fractional acreage basis.

68. The factual and statistical data contained in the following documents, offered by plaintiffs, attached hereto and designated Exhibits R, through W, are true:

Exhibit R. Breakdown of voting in District elections for the officers of director, president and vice president for 1970, 1972 and 1974.

Exhibit S. Summary of water usage and water charges for the directors of the District during 1974.

Exhibit T. Biographical data of the District directors.

Exhibit U. Acreage and eligible votes in each of the ten (10) divisions of the District.

Exhibit V. Management's recommendation: Proposed Rate Increase, dated June 2, 1975.

Exhibit W. Formal presentations made at special Board meeting of the District, dated July 30, 1975.

69. Defendants offer the following maps, designated Exhibits X, Y and Z attached hereto, which are true and accurate representations of the areas they purport to represent:

Exhibit X. Salt River Project Agricultural Improvement and Power District, Eligible Voting Lands (1974).

Exhibit Y. Salt River Valley Water Users' Association, Eligible Voting Member Lands (1974).

Exhibit Z. Salt River Project Service Area (electricity) (1976).

FIRST SUPPLEMENT TO STIPULATED STATEMENT OF FACTS

70. Subject to the qualifications explained in this paragraph, the relative urban and agricultural land uses in the District in selected years were as follows:

Year	Agricultural	Urban
1937	229,460	13,500
1947	228,475	14,650
1957	199,960	39,441
1970	151,946	86,318
1971	146,005	92,259
1972	138,724	99,540
1973	132,774	105,490
1974	125,741	112,523
1975	124,452	113,812

These data were generated under a system devised by the District. The land use change has averaged 1% per year since 1937, although in the early 1970's the rate of change was higher due to circumstances of unusual economic growth. The rate of change in 1975 was 0.5%. The figures given do not purport to reflect actual land use. The figure for urban use include land actually put to urban use, land put to non-commercial agricultural use (crops or livestock used by owner rather than marketed), and vacant land held for speculation. Vacant land is classed according to the predominant surrounding use, except that it is sometimes assumed that vacant land in rural areas but in the urban growth pattern is held for speculation if owned by corporations, so such land is sometimes classed as urban.

71. Water assessments and delivery charges were recently increased to produce an additional $1,055,000 in water revenues. Mandatory acreage water assessments were increased 30%; delivery charges for additional normal flow and stored and developed water were increased 88%.

72. Plaintiff DWIGHT BRAHS purchases electricity from the District. Between March 1975 and February 1976, his average monthly bill was $27.20; his lowest bill was $18.39, and his highest bill was $34.83. Plaintiff ROLAND JAMES owns and operates a 16-unit apartment building; he purchases electricity from the District for each of the apartment units. Between March 1975 and February 1976, the average monthly bill for these 16 units was $292.29, the lowest bill was $205.91, and the highest bill was $410.95.

73. In April 1974, approximately 359,601 persons owned parcels of land within the District eligible to be voted if those persons were otherwise qualified electors of the State of Arizona. It cannot be determined how many of those 359,601 persons were qualified electors of the State of Arizona and therefore were eligible to vote their land in the District election.

74. During 1976, it is estimated that 25% of all water deliveries by the Association will be to cities. These deliveries are of water either owned by the cities or which landowners in the cities have allowed the cities to accept from the District on behalf of the landowners. Another 15% of water delivered by the Association will be used by its owners (the landowners) in non-agricultural but predominantly irrigation uses, including parks, playgrounds, schools and subdivision irrigation. The balance of the water delivered by the District will be used by its owners in agriculture.

75. As is indicated in paragraph 41 of the Stipulated Statement of Facts, eight Valley cities, pursuant to contract with the Association, accept delivery from the Association of some water which is appurtenant to or allocated to land within the cities. Those cities take delivery of the landowners' water as agents for the landowners. The cities accept delivery only of water which the individual landowners designate to be delivered to the cities as their agents. The cities then act as agents of the Association for the collection of taxes, assessments, and other charges on all Salt River Project lands within the cities, and they guarantee the payment of such charges to the Association. Although the practice may vary from city to city, presently the City of Phoenix pays the assessments and charges on behalf of the landowners from city water revenues, and the landowners then allow the city to use their water without receiving further compensation from the city for their water. The exact number of acres for which the landowners have designated each city to accept delivery of water is variable since such a designation, once made, may be changed. As of December 31, 1975, landowners were allowing the cities to accept delivery of water belonging to the following numbers of acres of District land:

Phoenix	45,751.95
Tempe	10,107.75
Peoria	513.85
Glendale	5,393.35
Gilbert	804.55

Scottsdale	1,657.10
Mesa	1,513.25
Chandler	785.25

76. Arizona Public Service Company and Tucson Gas & Electric Company are the first and third largest electric utilities in the State of Arizona. They are both investor-owned private corporations. Of the eight cities in the District, only Mesa serves electrical energy to its citizens.

77. Mr. and Mrs. WILLIAM P. SCHRADER currently own 0.22 acres of land in the District.

78. The cost to the District of holding an Association election alone is not significantly less than the cost of holding an Association election and a District election together.

79. Attached hereto and designated Exhibit AA is a true, accurate, authentic and complete copy of the contract under which the City of Phoenix delivers some water to the City as agent for some landowners. It is agreed that the contracts under which the Association delivers some water to Scottsdale, Tempe, Mesa, Peoria, Glendale, Gilbert and Chandler do not vary materially from the terms of Exhibit AA.

80. The share of agricultural water subsidy of the average residential power customer of the District in 1975 was approximately $9.47, and the residential water subsidy was approximately $4.81. Using figures most recently available (1974), the average subsidy per acre-foot of water was $14.03. The average cost for 5 acre-feet of water in 1974 was $22.50. The full cost of the same amount of water without any assistance would be $101.15.

81. Attached hereto and designated Exhibit BB is a map which depicts the land uses within the District and surrounding areas as of 1970. (This map was prepared by the Maricopa Association of Governments.)

SECOND SUPPLEMENT TO STIPULATED STATEMENT OF FACTS

82. Presently all eight cities which accept delivery of water on behalf of landowners pay the assessments and charges on behalf of the landowners from city water revenues.

83. The average subsidy per acre-foot of water for the following years was as follows:

1974	$14.03
1973	8.02
1972	15.32
1971	13.60
1970	12.65

84. The share of agricultural water subsidy and residential water subsidy of the average residential power customer, assuming those subsidies are met from no other power revenues, of the District in the following years was as follows:

Year	Agri. Assist.	Res. Assist.
1975	$ 8.89	$5.22
1974	12.06	7.39
1973	11.35	4.41
1972	17.31	8.92
1971	17.03	7.65
1970	19.12	7.81

In fact, the share of subsidy borne by residential power users is less because all power customers share some portion of the support.

85. On the average, about 5.3% of the agricultural land in the District lies fallow or idle. Various crops consume differing amounts of water per acre. For example, alfalfa hay consumes a seasonal use of 74.3 inches of water per acre; cotton consumes 41.2 inches; cereals generally consume less than 25.5 inches and lettuce 8.5 inches of water per acre. These crops, among others, are grown on District lands.